

STATE OF MICHIGAN  
COURT OF APPEALS

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MARIE E. THURKETTLE,

Plaintiff-Appellant,

v

GLENNA SMITH and RALPH SMITH,

Defendants-Appellees.

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UNPUBLISHED

March 26, 1999

No. 205336

Barry Circuit Court

LC No. 96-000452 CH

Before: Whitbeck, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a judgment of no cause of action in favor of defendants. Plaintiff appeals as of right. We affirm.

First, plaintiff argues that the trial court erred when it found that plaintiff failed to meet her burden of proof. To establish a cause of action for fraud or misrepresentation, the plaintiff must prove (1) that the defendant made a material representation; (2) that the representation was false; (3) that when the defendant made the representation, the defendant knew that it was false, or made it recklessly without knowledge of its truth or falsity; (4) that the defendant made it with the intent that plaintiff would act on it; (5) that the plaintiff acted in reliance on it; and (6) that the plaintiff suffered injury. *Eerdmans v Maki*, 226 Mich App 360, 366; 573 NW2d 329 (1997).

Plaintiff contends that the trial court erroneously held plaintiff to a clear and convincing burden of proof. This Court has previously noted that it is unclear what standard of proof courts should apply in fraud cases. See *Mina v General Star Indemnity Co*, 218 Mich App 678, 685; 555 NW2d 1 (1996), rev'd in part on other grounds 455 Mich 866 (1997). However, we find no error requiring reversal because plaintiff failed to establish fraud by the lesser preponderance of the evidence standard of proof. Plaintiff provided no evidence on the elements of fraud. Rather, plaintiff contended that she was a victim of fraud because she did not know what she signed, and defendants had not explained the legal implications to her. However, a person who signs and executes an instrument without inquiring as to its contents cannot have the instrument set aside on the grounds of ignorance of the contents. *Christensen v Christensen*, 126 Mich App 640, 645; 337 NW2d 611 (1983). Furthermore, one

cannot avoid a contract on the basis that she did not read it or she supposed the contract terms were different. *Stopczynski v Ford Motor Co*, 200 Mich App 190, 193; 503 NW2d 912 (1993).

Next, plaintiff argues that the trial court erred in determining that plaintiff had made a gift to defendants. However, plaintiff's sole allegation was that the transfer of her property was accomplished by fraud. Because the trial court found that plaintiff had failed to establish a claim of fraud, its statement that the transfer was a gift was extraneous and does not constitute error requiring reversal.

Finally, plaintiff contends that the lower court failed to sufficiently set forth findings of fact and conclusions of law. In an action tried without a jury, the trial court must find facts and separately state its conclusions of law about contested matters. MCR 2.517(A). However, specific findings of fact on each element are not necessary. *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). In the present case, the record reveals that the trial court was aware of the fraud claim and correctly applied the law to the facts that had been presented. Thus, the court's findings were sufficient.

Affirmed.<sup>1</sup>

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Richard Allen Griffin

<sup>1</sup> At oral argument, a question was raised regarding whether defense counsel's representation of defendants in this matter constituted a conflict of interest. However, it now appears that defense counsel misspoke when he stated that he had represented plaintiff in the preparation of the deed. The uncontroverted affidavit of defendant Ralph Smith, filed in conjunction with the supplemental briefs, establishes that defense counsel was retained and paid by defendant Smith, not plaintiff.